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**Revised aid to discussions and negotiations prepared by the Co-Chairs concerning a draft memorandum of understanding between the Conference of the Parties to the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction and the Council of the Global Environment Facility**

The Conference of the Parties to the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (hereinafter “the Conference of the Parties”) and the Council of the Global Environment Facility (hereinafter “the Council”),

*Recalling* paragraph 3 of article 52 of the Agreement, which establishes a mechanism for the provision of adequate, accessible, new and additional and predictable financial resources under the Agreement and provides that the mechanism shall assist developing States Parties in implementing the Agreement, including through funding in support of capacity-building and the transfer of marine technology, and perform other functions as set out in article 52 of the Agreement for the conservation and sustainable use of marine biological diversity,

*Recalling also* paragraph 4 of article 52 of the Agreement, which provides that the mechanism shall include the Global Environment Facility trust fund, along with a special fund and a voluntary trust fund,

*Recalling further* paragraph 6 of article 52 of the Agreement, which provides that the special fund and the Global Environment Facility trust fund shall be utilized in order to: (a) fund capacity-building projects under the Agreement, including effective projects on the conservation and sustainable use of marine biological diversity and activities and programmes, including training related to the transfer of marine technology; (b) assist developing States Parties in implementing the Agreement; (c) support conservation and sustainable use programmes by Indigenous Peoples and local communities as holders of traditional knowledge; (d) support public consultations at the national, subregional and regional levels; and (e) fund the undertaking of any other activities as decided by the Conference of the Parties,

*Recalling* paragraph 7 of article 52 of the Agreement, which provides that the financial mechanism should seek to ensure that duplication is avoided, and complementarity and coherence promoted, among the utilization of the funds within the mechanism,

*Recalling also* paragraph 9 of article 52 of the Agreement, which provides that, for the purposes of the Agreement, the mechanism shall function under the authority, where appropriate, and guidance of the Conference of the Parties and shall be accountable thereto, and that the Conference of the Parties shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources,

*Recalling further* paragraph 10 of article 52 of the Agreement, which provides that the Conference of the Parties and the Global Environment Facility shall agree upon arrangements to give effect to the relevant paragraphs of article 52 of the Agreement at the first meeting of the Conference of the Parties,

*Recalling* paragraph 16 of article 52 of the Agreement, which provides that the Conference of the Parties shall undertake a periodic review of the financial mechanism to assess the adequacy, effectiveness and accessibility of financial resources, including for the

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delivery of capacity-building and the transfer of marine technology, in particular for developing States Parties,

*[Recalling also article 7 of the Agreement, which sets out the general principles and approaches by which Parties to the Agreement shall be guided in order to achieve the objectives of the Agreement, including full recognition of the special circumstances of small island developing States and of least developed countries, and acknowledgement of the special interests and needs of landlocked developing countries,]*

*Recalling further paragraph 6 of the Instrument for the Establishment of the Restructured Global Environment Facility, as amended on 25 August 2023 at the seventh Global Environment Facility Assembly, which provides that the Global Environment Facility shall operate as one of the entities comprising the financial mechanism of the Agreement,*

*Having consulted each other, and taking into account the relevant aspects of their governance structures as reflected in their constituent instruments,*

Have reached the following mutual understanding:

## **Definitions**

1. For the purpose of the present memorandum of understanding:

(a) “Agreement” means the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction;

(b) “Assembly” means the Assembly of the Global Environment Facility as defined in the Instrument for the Establishment of the Restructured Global Environment Facility;

(c) “Conference of the Parties” means the Conference of the Parties to the Agreement;

(d) “Council” means the Council of the Global Environment Facility as defined in the Instrument for the Establishment of the Restructured Global Environment Facility;

(e) “GEF” means the mechanism established by the Instrument for the Establishment of the Restructured Global Environment Facility;

(f) “Instrument” means the Instrument for the Establishment of the Restructured Global Environment Facility;

(g) “Party” means Party to the Agreement.

## **Purpose**

2. The purpose of the present memorandum of understanding is to make provision for the relationship between the Conference of the Parties and GEF in order to give effect to the provisions relating to the GEF trust fund in paragraphs 3, 4, 6, 7, 9, 10 and 16 of article 52 of the Agreement and paragraphs 6, 26 and 27 of the Instrument.

## **Guidance from the Conference of the Parties**

3. In accordance with paragraph 9 of article 52 of the Agreement, the Conference of the Parties will provide GEF with guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources, as well as any revisions to such guidance as it may adopt. The Conference of the Parties will, after each of its ordinary meetings, communicate to GEF any guidance approved by the Conference of the Parties concerning the mechanism.

## **Conformity with guidance from the Conference of the Parties**

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4. The Council will ensure the effective operation of GEF, in serving as part of the financial mechanism under the Agreement, as a source of funding for activities for the purposes of the Agreement, in conformity with the guidance provided to it by the Conference of the Parties.
5. The Council may raise with the Conference of the Parties any matter arising from the guidance adopted by the Conference of the Parties. In particular, if the Conference of the Parties provides guidance to GEF subsequent to its first meeting, the Council may consult with the Conference of the Parties to update and clarify existing guidance in the light of any new or additional guidance that it receives.
6. The Council may seek guidance from the Conference of the Parties on any other matters it considers relevant to its serving as part of the financial mechanism under the Agreement.
7. Funding decisions for specific projects and activities should be agreed between the developing State Party concerned and the Council in accordance with the overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources established by the Conference of the Parties. The Council is responsible for approving GEF work programmes. If a Party considers that a decision of the Council regarding a specific project is not consistent with the guidance provided by the Conference of the Parties in the context of the Agreement, and if after consideration the Conference of the Parties decides that the concern of the relevant Party has merit, the Conference of the Parties will seek clarification from the Council and analyse the observations presented to it by the concerned Party and the response by the Council. In the event that the Conference of the Parties considers that the project decision by the Council is not consistent with the overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources established by the Conference of the Parties, it may ask the Council for further clarification on the specific project decision by the next ordinary meeting of the Conference of the Parties with a preference for as soon as possible after the request has been made, and, ~~in due time~~, for a reconsideration of that decision within a timeline to be specified by the Conference of the Parties with all efforts made to ensure it does not go beyond the timeline of the proposed project.

## Reporting

8. GEF will prepare and submit, for consideration by the Conference of the Parties at each of its ordinary meetings, reports on its activities related to the Agreement and on the conformity of those activities with the guidance received from the Conference of the Parties. Such reports will be made available to the Conference of the Parties through its secretariat at least 12 weeks prior to the commencement of the relevant meeting.
9. In order to meet the requirements of accountability to the Conference of the Parties, reports submitted by GEF will cover all GEF-financed activities carried out in implementing the Agreement, whether such activities are carried out by the GEF implementing agencies, by the GEF secretariat or by executing agencies implementing GEF-financed projects. To that end, GEF will require all such bodies, with respect to GEF-financed activities, to comply with GEF policy on disclosure of information.
10. The reports of GEF will include information on GEF activities related to the Agreement and on the consistency of those activities with the guidance from the Conference of the Parties, as well as any decision of the Conference of the Parties communicated to GEF under article 52 of the Agreement.
11. In particular, the reports will provide, inter alia:
- (a) Information on how GEF has responded to the guidance provided by the Conference of the Parties, including, where appropriate, through the incorporation of the guidance into GEF strategies and operational policies;
  - ~~{~~(b) Information on access modalities, programming streams and priorities, and their respective gaps;~~}~~
  - (c) The conformity of the programming directions of GEF with the guidance of the Conference of the Parties;

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(d) A synthesis of projects approved by GEF and projects being implemented during the reporting period in relation to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, with an indication of GEF and other resources allocated to each such project and the implementation status of each project;

(e) A list of project proposals submitted for approval to GEF, through the GEF implementing agencies, by eligible Parties, in relation to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including reporting on their approval status, an indication of the total financial resources allocated to the approved projects, and, in cases of projects not approved, the reasons therefor;

(f) A review of the project activities approved by GEF and their outcomes, including information on funding and progress in implementation, in line with relevant reporting guidelines and the streamlining efforts within GEF;

~~[(g) Additional financial resources leveraged by GEF for the implementation of the Agreement [with clarifications on how these resources were used and confirmation that these resources are not counted as part of the reported information set out in subparagraphs (a) to (f) above].~~

12. GEF will also report on GEF monitoring and evaluation activities concerning projects in relation to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

13. GEF will also provide information on other matters concerning the discharge of functions under article 52 of the Agreement as in relation to the GEF trust fund, as may be requested by the Conference of the Parties. If GEF has difficulties in responding to any such request, it will explain its concerns to the Conference of the Parties, and the Conference of the Parties and GEF will find a mutually acceptable solution.

14. GEF will include in its reports to the Conference of the Parties any views that it may have regarding the guidance provided by the Conference of the Parties.

15. The Conference of the Parties may raise with GEF any matter arising from the reports received from GEF and seek clarification and explanation from GEF.

### **Periodic review of the financial mechanism and independent assessment of the Global Environment Facility**

16. As provided for in paragraph 16 of article 52 of the Agreement, the Conference of the Parties will conduct a periodic review of the financial mechanism to assess the adequacy, effectiveness and accessibility of financial resources, including for the delivery of capacity-building and the transfer of marine technology, in particular for developing States Parties.

17. In preparing its review of GEF as part of the financial mechanism, the Conference of the Parties will, as appropriate, take into account the reports of the GEF Independent Evaluation Office and the views of GEF. The GEF Independent Evaluation Office will consult, as appropriate, the secretariat of the Agreement when preparing evaluations of the activities of GEF related to the Agreement. The Conference of the Parties may commission an independent assessment of the overall performance of GEF and the performance of the Council, as part of the financial mechanism, to coincide with the periodic review of the financial mechanism.

18. The Conference of the Parties may communicate the results of such reviews and any such assessments to the Council-GEF. ~~GEF-The Council~~ will take appropriate actions to address any matters highlighted in these se results and include information on any such actions in its subsequent report to the Conference of the Parties.

### **Determination of funding needed and available**

19. In accordance with paragraph 14 of article 52 of the Agreement, the finance committee on financial resources, established by the Conference of the Parties, will periodically report and make recommendations on the identification and mobilization of funds under the

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mechanism and take into consideration the needs of Parties and respond to these needs in an iterative way that fills the gaps identified by needs assessments~~assessments~~.

20. The relevant reports of the finance committee on financial resources and the relevant decisions of the Conference of the Parties on the identification and assessment of funding needs and resource mobilization will be ~~taken into account used to inform~~ the resource mobilization processes of GEF, in particular its replenishment processes. GEF will include, in its reports to the Conference of the Parties, information on resource mobilization and the financial resources available for its serving as part of the financial mechanism under the Agreement.

### **Complementarity and coherence within the financial mechanism**

21. In serving as part of the financial mechanism under the Agreement, GEF will operate in the context of appropriate arrangements with other parts of the mechanism to avoid duplication and promote complementarity and coherence among the utilization of the funds within the financial mechanism, in conformity with any specific guidance from the Conference of the Parties.

### **Cooperation between secretariats**

22. The secretariat of the Agreement and the secretariat of GEF will communicate and cooperate with each other and consult on a regular basis to facilitate the effectiveness of GEF in performing its functions as set out in paragraph 6 of article 52 of the Agreement.

23. In particular, in accordance with the GEF project cycle, the secretariat of the Agreement will be invited to comment on the project proposals related to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction under consideration for inclusion in a proposed work programme, especially with regard to their consistency with the guidance provided by the Conference of the Parties.

24. The secretariats of the Agreement and GEF will reciprocally consult with each other on draft texts of documents relevant to both the Agreement and GEF prior to issuing the final texts of such documents and take any comments into account in their finalization.

25. Official documentation of GEF, including information on project activities, and of the Agreement will be made available on the website of GEF and the website dedicated to the Agreement.

### **Reciprocal representation**

26. On a reciprocal basis and in accordance with the applicable rules of procedure, representatives of GEF will be invited to attend meetings of the Conference of the Parties and relevant subsidiary bodies, and representatives of the Agreement will be invited to attend meetings of GEF.

### **Review and amendments**

27. The present memorandum of understanding may be reviewed in the light of the periodic review of the financial mechanism and may be amended at any time by written consent between the Conference of the Parties and the Council.

### **Interpretation**

28. If differences arise in the interpretation of the present memorandum of understanding, the Conference of the Parties and the Council will reach a mutually acceptable solution.

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### **Entry into effect**

29. The present memorandum of understanding will come into effect upon approval by the Conference of the Parties and by the Council.

### **Termination**

30. The present memorandum of understanding may be terminated by either Party giving six months' notice in writing to the other. The termination will not affect the validity or duration of activities initiated before such termination.